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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,989	01/22/2004	Russell A. Shepherd	158-03	5995

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PAUL AND PAUL
2000 MARKET STREET
SUITE 2900
PHILADELPHIA, PA 19103

EXAMINER

ELKINS, GARY E

ART UNIT PAPER NUMBER

3782

DATE MAILED: 11/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/762,989

Applicant(s)

SHEPHERD, RUSSELL A.

Examiner

Gary E. Elkins

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 20040308.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, part (g), “an upstanding wall” is a double inclusion of an element, i.e. the element is being reintroduced into the claims.

In claim 4, “two opposing walls” is a double inclusion of an element.

In claim 10, part (f), line 2, “of the container” is unclear. Does this mean the container preassembly or the preassembly when fully assembled? In claim 13, “of the container” is unclear for the same reason.

In claim 13, “two opposing wall units” is a double inclusion of elements.

In claim 15, parts (d), (e), (g), (h) and in the preamble, the phrases “when fully assembled”, “in the fully assembled condition of the container blank” and “when the container blank is fully assembled” are each unclear since a container blank does not have a fully assembled condition except as a flat sheet of material. A blank is an intermediate product which no longer exists once it is folded. It therefor does not have a “fully assembled condition” as a container.

In claim 15, part (e), “a bottom wall panels” is grammatically unclear. Also, “its panels” is unclear within the context of the claim, i.e. what is “its” referring to and how are the bottom wall panels adapted to be substantially closed by “its panels”?

In claim 15, part (f), “respective primary front and back wall panels” is a double inclusion of elements.

In part (g) of claim 15, “their one ends thereof” and “their opposite ends” each lack antecedent basis in the claim and “their” is unclear with the previous element(s) referred to. Also, “having tabs for attachment...” is unclear with respect to what previous element is “having...”. Also, “primary front and back wall panels” and “right and left wall panels” are each a double inclusion of elements.

In claim 17, “at least one primary or secondary front or back wall panel” is a double inclusion of elements.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 5-7, 10, 11 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Bolding. Bolding discloses a container including spacer panels 64-67 connected to first opposing upstanding wall panels 15, 20, 28; 17, 22, 30 arranged generally parallel to and spaced inboard of a second pair of opposing upstanding walls 16, 29; 18, 31 as claimed.

4. Claims 1-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Kanter et al ‘653. Kanter et al ‘653 discloses spacer panels 40 formed at the corners of the box foldably connected to first upstanding walls 24, 90; 20a, 20b, 62a, 91 and arranged generally parallel to and inboard of the second pair of upstanding walls as claimed.

Allowable Subject Matter

5. Claims 15-17, as best understood in view of paragraph 1 above, would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Conclusion

The remaining cited prior art is illustrative of the general state of the art.


In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

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If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.


Gary E. Elkins
Primary Examiner
Art Unit 3727

gee
29 October 2006